

1 BART H. WILLIAMS (State Bar No. 134009)
bart.williams@mto.com
2 MANUEL F. CACHÁN (State Bar No. 216987)
manuel.cachan@mto.com
3 MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue
4 Thirty-Fifth Floor
Los Angeles, California 90071-1560
5 Telephone: (213) 683-9100
Facsimile: (213) 687-3702
6

7 DAVID H. FRY (State Bar No. 189276)
david.fry@mto.com
8 JESLYN A. MILLER (State Bar No. 274701)
jeslyn.miller@mto.com
9 MUNGER, TOLLES & OLSON LLP
560 Mission Street
10 Twenty-Seventh Floor
San Francisco, California 94105-2907
11 Telephone: (415) 512-4000
Facsimile: (415) 512-4077
12

13 Attorneys for Defendants
WELLS FARGO & COMPANY and
WELLS FARGO BANK, N.A.
14

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17

18 SHAHRIAR JABBARI,
19 Plaintiff,
20 vs.
21 WELLS FARGO & COMPANY and WELLS
FARGO BANK, N.A.,
22 Defendants.
23

Case No. 15-cv-02159 VC

**DECLARATION OF CONNIE KOTZMAN
IN SUPPORT OF DEFENDANTS'
MOTION TO COMPEL ARBITRATION**

[Filed concurrently with Defendants' Motion
to Compel Arbitration]

[REDACTED VERSION OF DOCUMENT
SOUGHT TO BE SEALED]

Judge: Hon. Vince Chhabria
Ctrm.: 4
Action Filed: May 13, 2015

1 I, Connie Kotzman, state and declare as follows:

2 1. I am a Vice President of Wells Fargo Bank, N.A. ("Wells Fargo"). My present
3 position is Project Manager of the Greater Los Angeles and Southern California Regions.

4 2. My office is located at 25152 Springfield Court, Suite 260, Valencia, California
5 91355.

6 3. I have been engaged in banking for 35 years, with 33 of those years at Wells Fargo.

7 4. I have worked as Teller, Service Manager, Sales and Services Manager, and Store
8 Manager. During the past 13 years, I have been a Market Support Consultant with Wells Fargo.
9 In that capacity I have supported branches with all policies and procedures, compliance, risk, and
10 operations.

11 5. I am familiar with policies and procedures for opening bank accounts, the
12 distribution of New Account Kits, accepting checks for deposit, online banking enrollment, the
13 assessment of fees, and all aspects of consumer banking transactions at Wells Fargo in California.

14 6. The documents referred to and attached to this Declaration were prepared by
15 various employees of Wells Fargo and kept in the ordinary course of Wells Fargo's business.
16 Each of the records was made at or near the time of each act, condition or event, by someone with
17 knowledge or by an automated bank system. The making of the records was a regular practice of
18 the Bank. The account statements were retrieved from a computerized system of records called
19 the Operations Image Browser that maintains images of the statements for each customer.
20 Account applications are stored on DIPR, the Bank's document retrieval system. Customer
21 disclosures and account agreements are maintained on the Deposit Products Group website on the
22 Bank's intranet. All of the attached documents were retrieved either by myself or by Wells Fargo
23 employees acting at my direction.

24 7. The following matters are stated based on my personal knowledge and I am
25 competent to testify thereto if called to do so in a court of law.

26

27

28

1 **Consumer Account Agreement**

2 8. When a customer opens a new personal account at Wells Fargo, he or she is
3 provided the operative Consumer Account Agreement (“CAA”). According to the Bank’s
4 standard operating procedure in 2011, the CAA was included as a part of a shrink-wrapped
5 package called the “New Account Kit” that was physically handed to the customer, or mailed to
6 him or her, when the account is opened. In 2011, the New Account Kit contained the CAA, the
7 Consumer Account Fee and Information Schedule, a brochure regarding Consumer Overdraft
8 Services, Wells Fargo U.S. Consumer Privacy Notice, guides to the accounts and common
9 checking account fees, and a Welcome Letter. The customer is also provided a document titled
10 Consumer Account Addenda that reflects any changes since the packaging of the New Account
11 Kit. The CAA is also available upon request at any banking location and is available on Wells
12 Fargo’s website, located at <https://www.wellsfargo.com/>.

13 9. The version of the CAA distributed to new customers in 2011 [REDACTED]
14 [REDACTED] was dated effective September 24, 2010 (the “2010
15 CAA”). A true and correct copy of the 2010 CAA is attached as **Exhibit 1**.

16 10. With the December 2011 statements, Wells Fargo notified its consumer banking
17 customers that the CAA would be revised effective February 15, 2012. A true and correct copy of
18 that notification, titled “Important Change in Terms Notice: Dispute Resolution Program:
19 Arbitration Agreement,” is attached as **Exhibit 2**.

20 11. [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 **Business Account Agreement**

24 12. When a customer opens a new business account at Wells Fargo, he or she is
25 provided the operative Business Account Agreement (“BAA”). According to the Bank’s standard
26 _____

27 ¹ [REDACTED]
28 [REDACTED]

1 operating procedure in 2013, the BAA is included as a part of a “New Account Kit”, which is
2 physically handed to the customer, or mailed to him or her, when the account is opened. In 2013,
3 the “New Account Kit” for business accounts included the Business Account Agreement, the
4 Business Account Fee and Information Schedule, Wells Fargo U.S. Consumer Privacy Notice, a
5 brochure titled Wells Fargo Working With Your Business to Prevent Fraud, a brochure titled
6 Funds Availability Policy for Commercial Accounts, and a Welcome Letter. The customer is also
7 provided a document titled Business Account Addenda that reflects any changes since the
8 packaging of the New Account Kit. The BAA is also available upon request at any banking
9 location and is available on Wells Fargo’s website, located at <https://www.wellsfargo.com/>.

10 13. The BAA that was distributed to new customers in August 2013, [REDACTED]
11 [REDACTED] was dated April 1, 2013 (“2013 BAA”). A true and
12 correct copy of the 2013 BAA is attached as **Exhibit 3**.

13 **Online Access Agreement**

14 14. When a customer enrolls in online banking, he or she receives notification of, and
15 must click an “I Agree” button constituting his or her agreement to, the terms of the Online Access
16 Agreement (“OAA”).

17 15. The OAA in place in August 2013, [REDACTED],
18 was dated effective as of December 13, 2012 (“2012 OAA”). A true and correct copy of the 2012
19 OAA is attached as **Exhibit 4**.

20 [REDACTED]
21 16. [REDACTED]

22 [REDACTED]
23 [REDACTED]

24 17. [REDACTED]
25 [REDACTED]

26 [REDACTED]
27 [REDACTED]

28

1 [REDACTED]
2 [REDACTED]
3 18. [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED] [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 19. [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 20. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED] [REDACTED]
26 21. [REDACTED]
27 [REDACTED]
28

1 [REDACTED]
2 [REDACTED] [REDACTED] [REDACTED]
3 [REDACTED]
4 [REDACTED] [REDACTED]
5 [REDACTED] [REDACTED]
6 [REDACTED]
7 22. [REDACTED]
8 [REDACTED]
9 [REDACTED] [REDACTED]
10 23. [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED] [REDACTED] [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED] [REDACTED] [REDACTED]
17 [REDACTED]
18 24. [REDACTED]
19 [REDACTED]
20 [REDACTED] [REDACTED]
21 25. [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED] [REDACTED] [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED] [REDACTED] [REDACTED]
28

1 26. [REDACTED]
2 [REDACTED] [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED] [REDACTED]
8 [REDACTED]
9 27. [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 28. [REDACTED]
13 [REDACTED] [REDACTED]
14 [REDACTED]
15 29. [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 30. [REDACTED]
20 [REDACTED]
21 [REDACTED]
22

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct. Executed July 9, 2015, at Visalia, California.

25 By: _____
26 Connie Kotzman
27

28